

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A CONDITIONAL USE)
PERMIT AND SUBSTANTIAL DEVELOPMENT)
PERMIT ISSUED TO COLUMBIA CUSTOM)
HOMES, INC. BY CITY OF KIRKLAND)

JOHN W. FLYNN, WALLACE NELSON, and)
THE OWNERS ASSOCIATION OF)
WASHINGTON SHORES NO. II, a)
condominium,)

Appellants,)

v.)

CITY OF KIRKLAND, COLUMBIA CUSTOM)
HOMES, INC., and STATE OF)
WASHINGTON, DEPARTMENT OF ECOLOGY,)

Respondents.)

SHB No. 78-30

ORDER DISMISSING
REQUEST FOR REVIEW

Respondent Columbia Custom Homes, Inc. moved to dismiss appellants' request for review. Respondent City of Kirkland joined in the motion. The matter was heard by the Shorelines Hearings Board, Dave J. Mooney, Chairman, Chris Smith, Robert E. Beaty, Rodney G. Proctor and David A. Akana (presiding) at a hearing in Lacey, Washington on October 30, 1978.

1 Respondent Columbia Custom Homes, Inc. was represented by its
2 attorney, Jerome D. Carpenter; respondent City of Kirkland was represented
3 by its attorney, Ralph I. Thomas; appellants were represented by their
4 attorney, Michael D. Hunsinger; respondent Department of Ecology was
5 represented by Robert V. Jensen, Assistant Attorney General.

6 Having considered the motions, the supporting affidavit and the
7 briefs of the movants and appellants, and the record and file herein,
8 the Board concludes that the motion should be granted.

9 On June 19, 1978 the Kirkland City Council adopted a resolution
10 approving a substantial development permit which stated in part that:

11 Notwithstanding, the recommendations heretofore given by the
12 Houghton Community Council, the subject matter of this
13 Resolution and the Conditional Use Permit and Substantial
14 Development Permit herein granted are, pursuant to Ordinance
15 2001, subject to the disapproval jurisdiction of the Houghton
16 Community Council, and therefore this Resolution shall
become effective only upon approval of the Houghton Community
Council or the failure of said Community Council to disapprove
this Resolution within 60 days of the date of the passage of
this Resolution.

17 The project, a condominium on Lake Washington, required a substantial
18 development permit pursuant to RCW 90.58.140, and a conditional use
19 permit under the City's Land Use Code. The Houghton Community Council
20 had a 60-day period in which to review the conditional use permit; it had
21 no jurisdiction over the substantial development permit. The shoreline
22 substantial development permit was mistakenly denominated a shoreline
23 conditional use permit. The shoreline permit was thereafter filed with
24 the Department of Ecology on June 26, 1978. On July 26, 1978, the
25 Department transmitted its approval of the "shoreline conditional use
26 permit" to Kirkland. Appellants filed their appeal with this Board on

1 September 11, 1978, which was certified by the Attorney General.

2 RCW 90.58.180(1) requires that any person seeking to appeal an
3 action relating to a shoreline permit must file a request for review
4 within thirty days of the date of filing as defined in RCW 90.58.140(6).
5 The final action on the shoreline permit by Kirkland occurred on
6 June 19, 1978; there was nothing more for it to do. Whether the date
7 of filing of the substantial development permit is used, June 26, 1978,
8 or the date the Department rendered a decision on the "shoreline
9 conditional use" permit is used, July 26, 1978, the result is the same:
10 appellants did not timely file their appeal.

11 It is most unfortunate that the wording of the City's resolution
12 caused confusion as to the finality of its action and the jurisdiction
13 of the Community Council. However, it is the Shoreline Management Act
14 and its regulations that must be uniformly applied and which must take
15 precedence. To hold otherwise in this case would go beyond the authority
16 of the Act and thwart a legislative intent to reach a prompt resolution
17 in shoreline matters. Accordingly, IT IS ORDERED that the request for
18 review is dismissed.

19 DONE this 14TH day of November, 1978.

20 SHORELINES HEARINGS BOARD

21 Dave J. Mooney
DAVE J. MOONEY, Chairman

22 Chris Smith
CHRIS SMITH, Member

23 Robert E. Beatty
ROBERT E. BEATTY, Member

24 Rodney G. Proctor
RODNEY G. PROCTOR, Member

25 David A. Akana
DAVID A. AKANA, Member

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